MONTANA LEGISLATIVE HISTORY

Chapter 440 19 81

Bill H _____ S 287 Original bill & history ___C

H. Committee on Judiciary

Hearing Date(s) 3/25 ___C

_____ ___C

_____ ___C

_____ ___C

Date Out 3/28 ___C

S. Committee on Judiciary

Hearing Date(s) 2/12 ___C

comm report 2/19 ___C

_____ ___C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

TRANSMITTED TO GOVERNOR: 4/23/81
ACTION: 5/1, SIGNED
CHAPTER 583

SB 287 — MANLEY, CONROY, GRAHAM, GALT — PROVIDING FOR DISPOSITION OF ABANDONED REAL PROPERTY INTERESTS ACQUIRED FOR A PUBLIC USE.
INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/26
HEARING: 2/12
REPORT: 2/19, DO PASS AS AMENDED
2ND READING: 2/24, DO PASS AS AMENDED
3RD READING: 2/25, YEAS: 49; NAYS0

TRANSMITTED TO HOUSE: 2/25
REFERRED TO COMMITTEE ON JUDICIARY: 3/3
HEARING: 3/25
REPORT: 3/28, BE CONCURRED IN, AS AMENDED
2ND READING: 3/31, YEAS: 89; NAYS: 0
ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING.
3RD READING: 3/31, YEAS: 96; NAYS: 0

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/10, BE CONCURRED IN
ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/11, YEAS: 46; NAYS: 1

TRANSMITTED TO GOVERNOR: 4/15/81
ACTION: 4/20, SIGNED
CHAPTER 440

288 — S. BROWN — IMPLEMENTING CONSTITUTIONAL AMENDMENT NO. 9, REGARDING CONFIDENTIALITY OF PROCEEDINGS BEFORE THE JUDICIAL STANDARDS COMMISSION.
INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/27
HEARING: 2/3
REPORT: 2/18, DO PASS
2ND READING: 2/20, DO PASS
3RD READING: 2/24, YEAS: 50

TRANSMITTED TO HOUSE: 2/24
REFERRED TO COMMITTEE ON JUDICIARY: 3/3
HEARING: 3/25
REPORT: 3/26, BE CONCURRED IN, AS AMENDED
2ND READING: 3/31, AS AMENDED — YEAS: 81; NAYS: 3
ON MOTION, 3/31, RULES SUSPENDED, PLACED ON 3RD READING.
3RD READING: 3/31, YEAS: 91; NAYS: 1

RETURNED TO SENATE WITH AMENDMENTS: 3/31
2ND READING: 4/10, BE CONCURRED IN
ON MOTION, 4/11, RULES SUSPENDED, PLACED ON 3RD READING
3RD READING: 4/11, YEAS: 47; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/15/81
ACTION: 4/20, SIGNED
CHAPTER 441

289 — LEE — REQUIRING THE ATTORNEY GENERAL TO CHALLENGE FEDERAL LAWS THAT IMPAIR TAXING AUTHORITY OR AUTONOMY OF THE STATE.
INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY: 1/27
HEARING: 2/17
REPORT: 2/19, DO PASS AS AMENDED

SENATE BILL NO. 287

INTRODUCED BY Manley, Conroy, Graham, Walt

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR DISPOSITION OF ABANDONED REAL PROPERTY INTERESTS ACQUIRED FOR A PUBLIC USE; REPEALING SECTIONS 60-4-201 THROUGH 60-4-205 AND 60-4-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Abandonment of real property interest obtained by eminent domain. Any real property interest obtained by right of eminent domain is considered abandoned when:

(1) the public use for which it was taken is formally discontinued by:

(a) written declaration of an authorized representative of the condemnor;

(b) order of a court of competent jurisdiction; or

(c) order of a regulatory body acting within its authority;

(2) the public use for which it was taken is discontinued for a period of more than 3 years;

(3) it becomes impossible to use the real property interest for the public purpose for which it was taken;

(4) it ceases to be necessary to use the real property interest for the public purpose for which it was taken; or

(5) it is not put to the public use for which it was taken within a period of 1 year from the date of its taking.

Section 2. Reversion of abandoned real property interest taken by eminent domain -- procedure. (1) Whenever a condemnor possessing less than fee simple absolute title to real property obtained by right of eminent domain abandons such property as set forth in [section 1], the real property interest shall revert to the original owner of the fee or his heirs, assigns, or successors in interest at the time of the abandonment or [at the time this act becomes effective], whichever is later.

(2) The owner of the fee need not return the condemnation money originally paid as compensation for the taking.

(3) The condemnor may remove structures that have been attached to the soil only upon written permission of the owner of the fee entitled to the reversion.

(4) The owner of the fee may seek enforcement of this section in accordance with the quiet title procedure outlined in Title 70, chapter 28, part 1. The condemnor bears the burden of disproving an intent to abandon the condemned property.

Section 3. Exchange of abandoned property taken by eminent domain -- procedure. (1) Whenever a condemnor

LC 1210/01

INTRODUCED BILL
SB 287

possessing fee simple absolute title in real property obtained by right of eminent domain abandons such property as set forth in [section 1], the condemnor may exchange the interest, either as entire or partial consideration, for any other real property interest needed for such public purpose.

(2) The condemnor shall notify the owner or successor in interest of its intention to exchange the interest.

(3) The owner from whom the interest was originally acquired by the condemnor or the owner's successor in interest may require the condemnor to offer the real property interest for sale in the manner provided in [section 4].

Section 4. Sale of abandoned property taken by eminent domain -- procedure. (1) Whenever a condemnor possessing fee simple absolute title to a real property interest obtained by right of eminent domain abandons such interest as set forth in [section 1], the condemnor may sell the interest to the highest bidder at public auction or by sealed bids.

(2) The condemnor shall publish notice of the public sale in a newspaper published in the county in which the real property interest is located once a week for 2 successive weeks. Sale shall be held in the county where the real property interest is located.

(3) The condemnor shall notify the owner from whom the real property interest was originally acquired by eminent

domain or his successor in interest:

(a) that bids were received for the purchase of the real property interest;

(b) of the amount of the highest bid; and

(c) that he may exercise the option to purchase under [section 5].

Section 5. Option of original owner or successor in interest to purchase at sale price. (1) The owner from whom the real property interest was originally acquired by eminent domain or his successor in interest has the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale.

(2) If no bids are received by the condemnor and the optionholder indicates in writing to the condemnor that he wishes to exercise the option, the condemnor shall have the real property interest appraised and sell the interest at that price to the optionholder.

Section 6. Abandonment of real property interest acquired for public use without exercising right of eminent domain. Whenever a person or entity acquires a real property interest for a public use without exercising the right of eminent domain and subsequently abandons it as set forth in [section 1], the real property interest shall be disposed of in accordance with the provisions of [sections 1 through 5].

Section 7. Codification instruction. Sections 1 through 6 are intended to be codified as an integral part of Title 70, chapter 30, and the provisions of Title 70, chapter 30, apply to sections 1 through 6.

Section 8. Repealer. Sections 60-4-201 through 60-4-205 and 60-4-207, MCA, are repealed.

-End-

SB 287

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 12, 1981

The twenty-sixth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 268:

TAXING THE COSTS OF IMPANELING A JURY AGAINST PARTIES WHO FAIL TO INFORM THE COURT OF A SETTLEMENT.

Senator Graham, District 29, Lodge Grass, introduced the bill as a result of many conversations he has had with clerks of the district court. He outlined the problem leading to this bill as being that of settlements reached orally by the attorneys for the principal parties in an action, who have then failed to notify the court of such a settlement in time to avoid calling a jury. This results in unnecessary expenses.

FURTHER CONSIDERATION OF HOUSE BILL 10:

Jim Lear, attorney with the Legislative Council, presented Rep. Keedy's additional information on the revised fiscal note. This information is contained on the attached Exhibit A.

CONSIDERATION OF SENATE BILL 287:

PROVIDING FOR DISPOSITION OF ABANDONED REAL PROPERTY INTERESTS ACQUIRED FOR A PUBLIC USE.

Senator Manley, District 14, Drummond, presented the bill, and described its purpose as being the solution to the problem of landowners who have had rights of way acquired through their land for public use, and then later abandoned. He said that this abandoned property should be returned to the owner of the adjacent land.

John Scully, in telling the strong points of the bill and the areas where he felt it needed work, stated that the bill addresses a very real problem. He told of a branch line in Gallatin County which had been abandoned by the Milwaukee Railroad. When the Milwaukee took over the privately owned

railroad and expanded it they started a checkerboard-style condemnation process and thereby coerced the landowners into selling their land. When the Milwaukee Railroad originally took the right of way, they never kept the fences and culverts repaired; they didn't keep the weeds down; they didn't burn the right of way; they didn't pay the taxes. He said that the train is currently being run for no other purpose than to maintain the right of way. He felt that if the conditions made at the time of acceptance are not kept up, this should be taken into consideration when determining abandonment. This bill, he stated, would not deal just with the Milwaukee, but all other easement situations such as with telephone lines, power lines, and roadways.

Mr. Scully then described the experience of the Manhattan Company in Gallatin County, which sold some land without including the right of way in the contract; and now the owner of the company wants ownership to the right of way. Mr. Scully feels that the land in question should revert to the present owner of the adjacent lands. He felt that subsection (3) of Section 2 should be broadened, but made more specific in terms of what would be attached and what would not be. Regarding the exchange section, he would be opposed to anybody's being able to exchange. Regarding fee title property, Section 6, he feels that it does not separate fee title interest from easement interests. He ended by saying that he supports Senator Manley's endeavor on this bill, but he feels the problem is more complex than the bill indicates.

Mons Tiegen, representing the Montana Stockgrowers and Cowbelles, told of his ranch's problem with the abandoned branch line in his area, which transferred the easement to the State Highway Department, which has told him that some of it will be held for auction. Since the portion of land involved runs through his hay meadow, he does not want a subdivision put in. He feels the land should somehow revert to him as the adjacent landowner.

Speaking in opposition to the bill on behalf of the Montana Power Company was Michael Zimmerman. He said that the time limit imposed in Section 2 would be unrealistic and unfair, as the regulatory lags required to obtain permits often extend beyond the time limit.

George Bennett, representing Montana-Dakota Utilities and Northern Plains Natural Gas Company, presented written testimony (marked Exhibit B and attached to these minutes).

Jim Hughes, speaking for Mountain Bell, agreed with the previous testimony against the bill, and said that he feels the bill would cause his company problems.

Will Hutchison, representing Montana Department of Highways, opposed the bill for three reasons: (1) no clear designation of interests created and abandoned; (2) unclear designation as to who qualifies for owners of the reversion interests; and (3) various portions of the bill conflict with present law. He ended by saying that it would repeal some of the policies now used by the Highway Department to the advantage of the landowner. He left additional written comments which are marked Exhibit C and attached to these minutes.

DISPOSITION OF SENATE BILL 268:

Senator Crippen moved that the third amendment shown on the attached Committee Report be adopted. His motion passed unanimously. Senator Olson moved that the first and second amendments shown on the attached Committee Report be adopted, and his motion passed unanimously. Senator Mazurek moved that the fourth amendment shown on the attached Committee Report be adopted, and the motion carried unanimously. Then Senator Olson moved that the bill DO PASS AS AMENDED, and his motion passed unanimously.

CONSIDERATION OF SENATE BILL 265:

AMENDING 72-15-301 TO INCREASE THE COMPENSATION FOR ESTATE PUBLIC ADMINISTRATIONS.

Senator Hager, District 30, Yellowstone County, presented the bill.

Senator Anderson asked David Niss if this bill would apply only to small estates of $7,500 or less. David replied that it would apply to any situation where the public administrator is used. Senator Hager said that a public administratior can only handle small estates. Further research on this question will be done by David.

CONSIDERATION OF SENATE BILL 29:

TO PROHIBIT PERSONS WHO ESTABLISH RESIDENCE NEAR AGRICULTURAL OR FARMING OPERATIONS, ETC., FROM BRINGING NUISANCE SUITS.

Senator Hager presented this bill, saying that it is based on legislation recently passed in Massachusetts and Georgia. He said the purpose of the bill is to prevent an animal raiser from being forced out of business because of subsequent development of the surrounding area.

Speaking in support of the bill were Jo Brunner, of Women

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/12/81

NAME	PRESENT	ABSENT	EXCUSED
~~Anderson, Mike, Chr. (R)~~	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: John Sully DATE: 2/12

ADDRESS: 3303 Sunoma Ct Bozeman

PHONE: 587-1365

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: S.B 287

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

26

NAME: Michael E Zimmerman DATE: Feb 12 '80

ADDRESS: 40 E Broadway Butte MT 59701

PHONE: 723-5421 ext 2404

REPRESENTING WHOM? MPC

APPEARING ON WHICH PROPOSAL: SB297

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: The scope of the Bill is too broad in that it reaches out to cause forfeiture of property purchased by private utilities for a public use. This property was obtained by a voluntarily negotiated purchase and should not be considered abandoned if the public use is ceased.

Some of the standards causing abandonment are vague and may have an adverse impact on property interests held for utility purposes.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

2

NAME: GEORGE T. BENNETT DATE: 2/12/81

ADDRESS: 406 FULLER HELENA 59601

PHONE: 442-3600

REPRESENTING WHOM? MONT. DAK. UTILITIES; NORTHERN PLAINS NAT. GAS CO.

APPEARING ON WHICH PROPOSAL: SB 257

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: WRITTEN TESTIMONY ATTACHED

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: JAMES R. HUGHES DATE: 2-12-81

ADDRESS: 2020 WINNE HELENA, MONT

PHONE: 442-8039

REPRESENTING WHOM? MOUNTAIN BIKE

APPEARING ON WHICH PROPOSAL: SB 287

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

(2)

NAME: WILL HUTCHISON DATE: FEB. 12, 1980

ADDRESS: 711 HOLTER HELENA

PHONE: 449-2584

REPRESENTING WHOM? MONTANA DEPARTMENT OF HIGHWAYS

APPEARING ON WHICH PROPOSAL: SB 287

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Exhibit B

TESTIMONY OF GEORGE T. BENNETT REPRESENTING MONTANA-DAKOTA UTILITIES CO. IN OPPOSITION TO SENATE BILL 287

* * * * *

Senate Bill 287 is directed at a situation where interests in real property acquired by eminent domain or condemnation are "abandoned".

This subject is already covered by present law, both statutory and case law which has been ignored by this bill. I am appending to my testimony textual material which covers the subject.

Turning to the bill itself, Section 1 thereof defines when an abandonment occurs. The written declaration covered by Section 1(1)(a) is already covered by law where there is a formal abandonment. Subsection (b) is already adequately covered and abandonment can be decreed by a court of competent jurisdiction under present law. Regarding Subsection (c), if there is any regulatory agency which has jurisdiction by law then there is no need to specify this in the bill. Subsection (2) provides that the property is deemed abandoned if the use for which it is taken is discontinued for a period of three years. This is an unusually short period of time and should at least coincide with the period of time for adverse possession which is five years. Also the owner of an interest in property acquired by condemnation should have the protection of this longer period of time in which to rebuild an obsolete plant or otherwise replace or repair a worn out or obsolete plant without being deemed to have abandoned the same. Subsection (3) states simply that there is an abandonment when "it

S.B. 287
COMMENTS OF MONTANA DEPARTMENT OF HIGHWAYS

The basic scheme of S.B. 287 is to create a common means of reverting abandoned public use lands to previous owners. If adopted in its current form, S.B. 287 will have a serious and immediate impact on state highway lands.

The bill treats abandoned public use lands according to the title of the owner: (1) lands held in "fee simple absolute" upon being abandoned "may" be exchanged or sold by the owner; (2) lands with "less than fee simple absolute" title revert automatically without compensation upon abandonment.

While the bill speaks in terms of lands acquired by eminent domain (condemnation) proceedings, Section 6 makes it clear the bill applies to all public use lands acquired by any means. The DOH acquires about 94% of its lands by negotiated sales and only about 6% through condemnation. The bill applies to all public uses listed in §70-30-102, MCA (attached) and to private as well as state owned lands.

The problems created by S.B. 287 fall into three general categories: (1) The property interests created and abandoned are not clear; (2) The owners of the reversionary interests are not clear; and (3) The bill conflicts with constitutional requirements, existing statutes, and also eliminates many public protections concerning the sale of state lands.

I. THE INTERESTS CREATED AND ABANDONED BY S.B. 287 ARE NOT CLEAR

This bill, by operation of law, will create a reversionary interest in the owner of land sold or taken for a public use - this means the land will, or can, be returned to the former owner

if it is no longer being put to a public use. As a legal matter, this creation of a reversion means all lands purchased or condemned for public use will vest less than a fee simple absolute title in the purchaser/condemnor. In Montana a fee simple absolute cannot be defeasible or contingent, and this bill does just that to all public use lands. §70-16-203, MCA.

If this interpretation is upheld, Sections 3, 4, and 5 could not be given effect as all titles to public use land would be "less than fee simple" and, if abandoned, would fall under Section 2, the automatic reversion provision without compensation.

This effect of the bill must be read with Section 1. That section provides for the abandonment of "any real property interest" when any one of five conditions occurs. Abandonment of the interest means the owner has given up the right of present possession of the property. §70-1-316, MCA. If the owner of public use land has given up the right to possession and the previous owner has a reversionary interest based upon the abandonment it follows as a necessary legal conclusion that the title reverts. Therefore there are two basic problems with the bill regarding Montana property law: (1) the act of creating a remainder in the previous owner in and of itself means all public use land will have "less than a fee absolute" title; and (2) by declaring the real property interest abandoned, the public use owner has lost the right to possess the land and the reversion takes place.

It is hard to predict how a court would rule in interpreting the bill, but the three most likely scenarios are:

(1) Since the owner's interest (or title) is abandoned, the law must act to fill a void so that the owner of the reversion reacquires the land. This means the land was not held in fee simple absolute and Section 2, automatic reversion without compensation, applies.

(2) While the possessing interest in the land is abandoned, the owner retains an undefined interest which normally could be sold or exchanged. However, since such an interest is "less than fee simple absolute" Section 2 once again applies.

(3) While the real estate interest is abandoned, the abandonment has no effect on the title. The owner has fee simple absolute title to the land and has the discretionary option to retain it for future use or to sell or exchange it pursuant to Sections 3, 4, and 5.

The bill in essence creates a Catch 22. If interpretation (1) or (2) above is used, Sections 3, 4, and 5 of the bill become useless. If (3) is used, Section 1 becomes useless.

In the bill's absence of a retroactive clause, the bill will only affect public use land acquired after its effective date. §1-2-109, MCA. The Montana Supreme Court has said new laws providing for sale of DOH land can be applied to land purchased before the new law if the new law does <u>not</u>:

"...impair the underlying right [title] or impose additional duties on the owner..."
<u>Castles v. State ex rel Montana DOH</u>, 607 P.2d 1223 (1980).

Under interpretation (1) and (2) above there could be no retroactive effect as the nature of the title is changed. Under

(3) there would be no change in the nature of the title so the bill could be applied to land acquired before the bill.

If the bill cannot be applied to previously owned land, there would be an interesting situation of a new law applying to newly purchased land and no law applying to the previously owned land as the bill repeals DOH's present disposition statutes.

II. THE OWNERS OF REVERSION INTERESTS ARE NOT CLEAR.

The automatic reversion of Section 2 is given to the "original owner of the fee or his heirs, assigns, or successors in interest at the time of abandonment". The way this is phrased, anyone of the above persons could claim the reversion. The fee in many of the DOH's easements have been sold numerous times, divided between surface fee and mineral fee, and sub-divided into small residential tracts, some of which border the easement and some of which don't. Who gets the automatic reversion?

Sections 3, 4, and 5 provide a reversion, or preferential purchase right (depending on the interpretation of Section 1), in "the owner from whom the interest was originally acquired by the condemnor or the owner's successor in interest". Given the example of the subdivision of the owner's remaining land, who must the DOH offer the land to?

III. THE BILL CONFLICTS WITH MONTANA'S CONSTITUTION AND EXISTING STATUTES, AND ELIMINATES MANY OF THE SAFEGUARDS OF THE CURRENT STATUTE.

A. S.B. 287 has no fair market value requirement, except in private sales to the previous owner (p. 4, line 17). Montana's Constitution provides no state lands can be disposed of except pursuant to general laws providing for disposition or until fair market value has been paid for the land. Art. X, §11, cl. 2. In the only case interpreting this clause, the Montana Supreme Court held:

> [Art. X, §11] provides that no such land shall be disposed of except pursuant to the statutes providing for such disposition. The section also indicates "full market value" should be received for the property... Norman v. State, ____Mont____, 597 P.2d 715 (1979). (emphasis added).

The failure of the bill to provide for fair market value appraisals and sales is contrary to the Norman decision and appears to be contrary to the Montana Constitution.

B. Various provisions of the bill conflict with current Montana statutes which are not repealed by the bill. These conflicts include:

(1) The current definition of highway "abandonment", §60-1-103(1), MCA;

(2) The ability of the highway department to acquire land for future use, §60-4-106;

(3) The ability of the highway department to lease its unused lands, §60-4-106;

(4) The ability of the highway department to acquire whole parcels, §60-4-105; and

(5) The ability of owners of reversions to bring lawsuits for "injury to the inheritance", §70-16-105.

These conflicts are just those directly affecting the DOH. There are numerous other conflicts with Montana's general property law concerning property rights and reversions.

C. The bill removes the following public protections from the sale of highway department lands:

(1) The use of appraisals is dropped from most sales;

(2) private sales to people other than previous owners are dropped;

(3) prohibition of sales below 90% of fair market value is dropped;

(4) proceeds going into state treasury to credit of DOH is dropped;

(5) time limit for the previous owner to meet the high bid is dropped;

(6) prohibition of transfer of title pending full cash payment is dropped;

(7) DOH discretion in terms and conditions of sales and exchanges is dropped;

(8) compensation for the reversion of some fee lands is dropped.

WDH:snk:10R

DATE February 12, 1981

COMMITTEE ON JUDICIARY

SB 29
SB 287 SB 268
SB 265

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Gene Pigeon	M.D.U.	SB287		✓
Will Hutchison	Mont Dept of Highways	SB 287		✓
Jim Hughes	Mountain Bell	SB287		✓
Geo. T. Bennett	Mont. Pwr. Utilities - Northern Nat. Gas	SB287		✓
Michael E Zimmerman	Mont. Power Co.	SB287		✓
John Scully	Self	"		✓
Ron Manning	NFO	SB29	✓	
Pat Goldsmith	Mont. Farm Bureau	SB29	✓	
[illegible]	W.I.F.E.	SB29	✓	
Tom Dowling	Mont. RR Assn	287	—	
Janet Manley	visitor.			
Kerry Manley	visitor			
Mike Meloy	MTCA	268		
Mons Teigen	Self	SB 287	✓	
" "	Mont Stockgrowers + Cowbelles	SB 29	✓	
Alice Tripplett	Nat'l Farmers Union & Mt Wheat Growers	SB29	✓	
Donald Dramer for the	National Farmers Union	SB29	✓	
Bill Ashley	MFB, MSA, SCFA + SCALA	SB 29	✓	

(Please leave prepared statement with Secretary)

MINUTES FOR MEETING
SENATE JUDICIARY COMMITTEE
February 19, 1981

The thirty-second meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 475:

Senator Olson moved that the bill DO PASS AS AMENDED (as shown on the attached Committee Report), and his motion passed unanimously.

DISPOSITION OF SENATE BILL 287:

David Niss outlined some of the amending he felt necessary.

Senator Manley stated that he had not drafted the bill in order to protect the Highway Department, but to protect the land owners from being run over roughshod by the Highway Department. He said that rather than "fix" his bill too much, he would prefer to see it killed.

The first amendment shown on the attached Committee Report was passed with Senator Olson in opposition. The fourth amendment was passed with Senator Crippen in opposition.

Senator B. Brown moved that the bill DO PASS AS AMENDED, and his motion carried.

DISPOSITION OF SENATE BILL 468:

Senator Crippen moved that the bill DO PASS, and his motion passed with Senator Tveit in opposition.

DISPOSITION OF SENATE BILL 289:

Senator B. Brown moved the first amendment, which passed unanimously; then he moved the second amendment, which passed over the opposition of Senator Anderson. Senator B. Brown moved that the bill DO PASS AS AMENDED, and his motion passed with Senators Berg, Tveit, and Anderson opposing.

DISPOSITION OF SENATE BILL 477:

Senator O'Hara moved that the bill DO NOT PASS, and his motion

STANDING COMMITTEE REPORT

February 19, 1991

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 287

Respectfully report as follows: That SENATE Bill No. 287

be amended as follows:

1. Page 2, line 3.
Following: "period of"
Strike: "1 year"
Insert: "10 years"

2. Page 2, line 9.
Following: "to the"
Strike: "original"

3. Page 3, line 17.
Following: "condemnor"
Strike: "may"
Insert: "shall"

4. Page 4, line 19 through line 25.
Strike: Section (in its entirety.
Renumber: the following sections.

And, as so amended,

~~DO PASS~~ DO PASS

JRS

Mike Anderson

Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE COMMITTEE JUDICIARY

Date February 19, 1981 Senate Bill No. 287 Time 10:52 a.m.

NAME	YES	NO
Anderson, Mike	✓	
O'Hara, Jesse A.	✓	
Olson, S. A.		✓
Brown, Bob	✓	
Crippen, Bruce D.	✓	
Tveit, Larry J.	✓	
Brown, Steve		✓
Berg, Harry K.		✓
Mazurek, Joseph P.		✓
Halligan, Michael	✓	

Robin Campbell
Secretary

Chairman

Motion: Pass as amended

(include enough information on motion--put with yellow copy of committee report.)

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 25, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Shelden, who was absent. Jim Lear, Legislative Council, was present.

SENATE BILL 380 SENATOR RYAN, chief sponsor, stated this bill is to include winery-wine distributor franchise agreements within laws regulating brewery-beer distributor agreements. The brewery-beer distributor agreement was enacted in 1974. It required breweries to put districts in writing and to file it with the Department of Revenue concerning their territory. With this bill wine would be distributed like beer. Wholesalers view this as an oversight.

ROGER TIPPY, representing the Montana Beer and Wine Wholesalers' Association, was in support of the bill. EXHIBIT 1. TIPPY also gave EXHIBITS 2 and 3, supreme court rulings, to the committee.

LYLE DUNHAM, representing the Montana Beer and Wine Wholesalers' Association, supported the bill. Wine wholesalers need some territory protection. He did not feel the bill would affect the price of wine to the consumer. As a distributor they are subject to cancellation by the wineries on a month-to-month basis and some distributors are subject on a week-to-week basis. Currently the wineries can cancel out of an agreement overnight. This bill would force them to have a good reason to cancel out, thus giving the distributor some rights. The Wholesalers Advisory Board of Schlitz supports this type of bill. It is a good communication between the wineries and the distributors because they have each other for protection.

There were no further proponents.

PHIL STROPE, Wine Institute, was opposed to the bill. STROPE stated the Attorney General's office says the bill is unconstitutional. STROPE said he has an economic interest in this. What this bill proposes to do might be advantageous to lawyers and not to the beer wholesalers. At this time the bill is amending the beer act. It would take out the franchise for wine and beer with it. There is no fiscal note on how they will fund. STROPE stated that any bill that comes out of the Senate that needs this many amendments should be killed and the law should be left as it is.

SYDNEY ABRAMS, representing the Wine Institute, spoke against the bill. The Wine Institute has 495 members. The wine industry has more and more types of wine annually. Of all the wineries, 80% are home-owned. The breweries are making a mistake. The wine industry is for free enterprise. The bottom line of the bill is to permit the raising of wine costs. ABRAMS asked how could you

MIKE MCCABE was in favor of the bill. The amount of $1,500 is not realistic. The average car accident exceeds $1,500. Landlord-tenant cases can easily exceed $1,500. Justice of the Peace is the court of the people. The cost connected between the documents and paperwork has increased 60%. Caseload will increase an additional 50-70%, which places a burden on the counties. MCCABE stated county commissioners are hard to deal with. The bill asking to increase the fee is reasonable. In subsection 3, the $10.00 will go to defray costs.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. TEAGUE asked if there were any problems with the title of the bill. JIM LEAR could not see any; although the title is narrow it is within the scope of the title of the bill.

REP. EUDAILY asked about section 25-35-112. JIM LEAR stated that section deals with the clerk of district court's fees. REP. EUDAILY asked what the disposition of the increased fees would be. The Senator replied it would be the same as it is presently.

MCCABE stated any civil fees would stay in the county. With traffic citations, 60% goes to the state.

REP. EUDAILY stated with the amendment the fee would be increased $5.00. MCCABE replied if the defendant fails to appear there is no charge. It does not make a change in the bookwork.

REP. KEEDY asked why is there a distinction between claims and counterclaims for jurisdiction purposes. It was replied $300 counterclaim never caught up with the claim jurisdiction. The jurisdiction amount must increase. Title 70 deals with compulsory counterclaims. It must be held at the same time. By making both these increases together we are eliminating a case in district court, filing a counterclaim.

SENATE BILL 287 SENATOR MANLEY, chief sponsor, stated this bill is to provide for disposition of abandoned real property interests acquired for a public use. The bill is introduced because the Milwaukee railroad is being abandoned and everyone thinks they should have a chunk of it from the Department of Fish and Wildlife to the people of record that the land was taken from. The people that it was taken from should have the right to have it back. The whole

right of eminent domain should be addressed. The bill has been amended extensively in the Senate. The bill would have originally mandated that land must be sold back to the landowner of record. It was found unconstitutional. You do not have the right to force someone to sell anything. If the highway department or any other business abandons the right of way and attempts to sell, the landowner would be given the right of first refusal.

PETER JACKSON was in support of the bill. It is a common sense thing to let the original landowner have the right to buy the land back.

SENATOR MIKE ANDERSON was in support of the bill. He felt as it is amended it is in the proper form and it will work. The history of the law has been the land should be taken care of. The market will not be tampered with and the land will be used at the highest and best use.

ROBERT VANDERVERE expressed the Appropriations Committee is thinking about buying land west of Helena. Since it is going to be abandoned the state should be able to buy the property and make a park out of it. It is a good idea to let the people have first chance to buy it.

There were no further proponents.

There were no opponents.

The Senator closed the bill.

REP. YARDLEY asked about page 3, line 19 referring to section 1. The Senator replied that was referring to the original bill and since section 1 was deleted from the bill that reference should also be deleted. REP. YARDLEY further asked about adjacent landowners. The Senator stated heirs or successors who would own the property now could buy the land that is being abandoned.

REP. BENNETT asked about the deletion of sealed bids. SENATOR MANLEY responded there have been two bills introduced that address the same problem. Sealed bids have been stricken so it will coincide with the other bills. Also, four weeks was in the other bills as to the time limit required for advertising.

Whether the notice of the sale would be published statewide was asked by REP. KEEDY. It would only be advertised in the county the land is located in. It was stressed this bill would require if land is to be sold, the sellers must notify the people they condemned it from or their successors so they can try and match the bid for the land.

REP. KEEDY asked about equal entitlement. SENATOR MANLEY replied if a brother and sister cannot get together to agree about buying

the land back why should the highway department try to decide who gets it. REP. KEEDY asked what if it is a 2/3 to 1/3 situation and they cannot agree. It was answered as long as they agree on the purchase of the land and buy it, it would be up to them on how to divide it.

SENATE BILL 288 SENATOR S. BROWN, sponsor of the bill, stated this is to implement the constitutional amendment no. 9, regarding the confidentiality of proceedings before the Judicial Standards Commission. This will implement what the voters passed. Section 2 is a new section that when a case is pending concerning the reviewing of a judge by the commission, the commission shall make their recommendation to the supreme court. The supreme court would take the final action.

If the commission recommended a case to the supreme court certain materials would be available to the public. If some of the charges were not valid, the public would only have access to the material that was valid. All transcripts concerning the misconduct would be released.

In section 3 of the bill, if any judge waives the right to privacy all records will be made available - unlike the present situation in Justice Shea's case.

Section 4, which is taken from the ABA standards, concerns when the commission could make public statements. Section 5 is also taken out of the ABA standards. In certain situations the commission may release information. Section 6 is important because it gives legislative audit committee authority to audit the commission. The audit will follow up on complaints.

Section 7, a biannual reporting would be required. Of the cases that have been brought before the commission 90-95% are from people who did not like the outcome of the case. Subsection D of section 7 deals with previous complaints against the judge.

There were no proponents.

There were no opponents.

The Senator closed the bill.

REP. KEEDY stated on page 2 being able to make papers and transcripts available to the public on charges upon which probable cause was found; how do you distinguish the allegations between judge A and judge B? SENATOR BROWN replied most of the charges that arise are brought by one person bringing a matter to the

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 28, 1981

The executive session of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Matsko, who was absent. Jim Lear, Legislative Council, was present.

SENATE JOINT RESOLUTION 4 REP. CURTISS moved do pass.

REP. CURTISS felt many groups delay energy projects frivolously.

REP. SHELDEN made a substitute motion of do not pass. He felt this would make certain groups a different class of citizens. He stated the bill was out of order and unAmerican. It would make a laughing stock out of the Montana legislature. REP. CONN supported the motion. It would not be right to give congress the power to do this by just handing it over to them and telling them to do something.

The motion of do not pass resulted in a roll call vote. Those voting yes were: CONN, IVERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, HANNAH, MCLANE and DAILY. The motion tied 7 to 7.

REP. BROWN moved to table the bill. A roll call vote resulted. Those voting yes were: CONN, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, and DAILY. The motion to table the bill failed 8 to 6.

The discussion went back to the original motion of do pass. A roll call vote resulted. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, and DAILY. Those voting no were: CONN, IVERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. The motion of do pass carried 8 to 7.

REP. CURTISS was assigned to carry the bill on the House Floor.

SENATE BILL 272 REP. DAILY moved do pass.

REP. HANNAH could not support the bill. If payment is not made a warrant may be filed. The system is not working.

REP. KEEDY moved to insert "the" on line 19 and 22 following "collect" and to insert "or agent" on line 25 following "sheriff" on page 4. On page 7, line 3 strike "4" and insert "1". The amendment carried.

REP. CURTISS wondered if the provision for a lien has priority over other liens at banks. This could be a period of time, like 30 days.

resulted in a roll call vote. Those voting yes to reconsider the action were: CONN, EUDAILY, IVERSON, ANDERSON, DAILY, ABRAMS, SHELDEN, KEEDY, TEAGUE, YARDLEY and BROWN. Those voting no were: KEYSER, BENNETT, CURTISS, HANNAH, and MCLANE. The motion carried 11 to 5.

REP. ANDERSON moved do pass.

REP. BROWN made a substitute motion of do not pass. The motion of do not pass resulted in a roll call vote. Those voting yes were: IVERSON, ANDERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY, BROWN and CONN. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, DAILY and ABRAMS. The motion of do not pass failed 9 to 8.

The vote was reversed to do pass. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, EUDAILY, HANNAH, MCLANE, DAILY, and ABRAMS. Those voting no were: IVERSON, ANDERSON, SHELDEN, KEEDY, TEAGUE, YARDLEY, BROWN and CONN.

SENATE BILL 287 REP. HANNAH moved do pass.

REP. KEEDY moved on page 3, line 19 to strike "as set forth in [section 1]." REP. KEEDY stated that was a carryover from the original bill, which section 1 was deleted. The motion carried unanimously.

JIM LEAR stated on page 4, section 2 the language "owner or his successor interest" is not clear. It could be possible that the original owner and the successor are both available. LEAR suggested to strike on line 14 following "owner" through "interest" and to insert "the equitable owner of the property adjacent to the real property interest obtained by eminent domain". REP. KEEDY felt that wording went beyond clarifying it. LEAR stated there is not an option where "or" is included. REP. KEEDY replied if it is limited to the original owner it will be only land that is condemned by eminent domain. LEAR stated the owner of the real property interest that was condemned, the successor and interest should be included. REP. KEEDY replied the language should be the present owner of the real property when it was condemned acquired through eminent domain. REP. BENNETT responded it was not true in all cases. It should be the successor in interest. REP. KEEDY stated the present owner of real property interest which had been condemned through the exercise of eminent domain. REP. IVERSON stated the present owner is the one who condemned the land.

REP. KEEDY moved on page 4, line 16 following "or" to strike "his" and to insert "otherwise or, if there is a" and following "interest" to insert "the successor in interest".

REP. EUDAILY felt there could be several owners.

The motion carried.

REP. DAILY moved do pass as amended.

REP. EUDAILY questioned why in the title dispositon is stricken. LEAR responded that the original bill did not refer to just sale of property. It also referred to exchange and reversion. It is proper to strike disposition since right of first refusal is all that remains in the bill.

REP. YARDLEY stated this would not apply in most cases. Nine out of ten landowners will agree without going to court. REP. CURTISS stated this would be a help for people whose land is condemned. In the Libby dam situation the people have no option to obtain their land back.

REP. IVERSON stated this will not help any of the people whose land was used for the Milwaukee. None of that land was condemned.

REP. DAILY moved to provide an immediate effective date and to amend the title accordingly. The amendment carried.

REP. KEEDY felt the language should be changed from condemnor and include somebody who has purchased the land. REP. KEYSER replied that would change the title and the intent of the bill.

REP. IVERSON agreed with REP. KEEDY. The committee should consider whether they want to get involved with the sale of the property. REP. KEEDY stated that does not change that. It would expand from condemned landowner to present landowner acquired through purchase. He felt that was fair. REP. IVERSON replied if someone bought the land he cannot see how we could involve ourselves on how to dispose of it. REP. KEEDY stated his amendment would expand the application of the bill. The condemnor may sell it but will not have to. REP. EUDAILY stated if land is purchased the owner has a right to do what he wishes with it.

REP. ABRAMS stated many times land is sold through the threat of eminent domain. REP. YARDLEY replied land taken under eminent domain is for public use.

REP. CURTISS asked if this would apply to a railroad that is going to merge. It was replied no, this is about abandonment.

REP. HANNAH stated property sold for public use that is now being abandoned, if it is not for public use he could not support it.

The committee decided to have JIM LEAR work out appropriate amendments concerning land for public use if abandoned. All were in favor of the motion but EUDAILY.

The motion of do pass as amended carried with REP. EUDAILY voting against the motion. REP. DAILY was assigned to carry the bill on the House Floor.

SENATE BILL 381 REP. MCLANE moved do pass.

REP. KEEDY moved on page 3, line 13 following "may" to strike "be given" and insert "not be withheld as". On line 12 after "publicity" strike "in" and insert "when". Following "petition" insert "is filed". REP. KEEDY stated the reason for the amendments is that under the present law it is permissible to open up proceedings or to close them at the judge's discretion. The proceedings should not be required to be open. The amendments carried with BROWN, CONN, YARDLEY, EUDAILY and SHELDEN voting no.

REP. KEEDY moved on page 3, line 19 following "adult" to strike the rest of the line through "imprisonment" on line 20. If an act is committed by an adult it would have been a felony, criminal mischief is covered. REP. IVERSON stated that is the same argument used on one of the other bills on this subject. REP. KEEDY stated criminal mischief six months or more must be a felony. LEAR stated it must exceed one year if it is going to be a felony. A judge might sentence within six months and one year. REP. KEEDY moved to amend his original amendment to include the striking of criminal mischief in the title of the bill. The motion carried unanimously.

REP. DAILY stated he would make a motion on the House Floor to strike line 15 "formally charged with or" because he did not feel the names should be provided to the press until the youth is convicted. REP. BROWN agreed.

JIM LEAR stated page 4, line 1 "may" should be changed to "must". The same change should be reflected on page 8, line 3 and page 2, line 20. REP. EUDAILY asked who would be responsible to give the information to the press when it says it must be made open to the public.

REP. CONN felt the wording was necessary. REP. IVERSON stated no one has the absolute responsibility. The motion was made by REP. KEEDY to change "may" to "must" as indicated above. The motion carried.

REP. MCLANE moved do pass as amended. The motion carried with CONN, BROWN, and SHELDEN voting no. REP. MCLANE was assigned to carry the bill.